

Rule 45. Subpoena.

(a) Form; issuance.

(a)(1) Every subpoena shall:

(a)(1)(A) issue from the court in which the action is pending;

(a)(1)(B) state the title and case number of the action, the name of the court from which it is issued, and the name and address of the party or attorney serving responsible for issuing the subpoena, ~~and its civil action number~~;

(a)(1)(C) command each person to whom it is directed

(a)(1)(C)(i) to appear ~~to and~~ give testimony at a trial, ~~or at~~ hearing, or ~~at~~ deposition, or

(a)(1)(C)(ii) to appear and produce ~~or to permit for~~ inspection, ~~and~~ copying ~~of testing or sampling~~ documents, electronically stored information or tangible things in the possession, custody or control of that person, or

(a)(1)(C)(iii) to copy documents or electronically stored information in the possession, custody or control of that person and mail or deliver the copies to the party or attorney responsible for issuing the subpoena before a date certain, or

(a)(1)(C)(iv) to appear and to permit inspection of premises, ~~at a time and place therein specified~~;

(a)(1)(D) if an appearance is required, specify the date, time and place for the appearance; and

~~(a)(1)(D) set forth the text of (a)(1)(E)~~ include a Nnotice to Ppersons Sserved with a Ssubpoena, in a form substantially similar ~~form~~ to the subpoena form appended to these rules. A subpoena may specify the form or forms in which electronically stored information is to be produced.

~~(a)(2) A command to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises, may be joined with a command to appear at trial, or at hearing, or at deposition, or may be issued separately.~~

~~(a)(3)~~ (a)(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney admitted to practice in ~~the court in which the action is pending~~ Utah may ~~also~~ issue and sign a subpoena as an officer of the court.

(b) Service; ~~scope fees; prior notice.~~

(b)(1) ~~Generally.~~

~~(b)(1)(A)~~ A subpoena may be served by any person who is at least 18 years of age and not a party ~~and is not less than 18 years of age to the case~~. Service of a subpoena upon ~~a the~~ person ~~named therein to whom it is directed~~ shall be made as provided in Rule 4(d) ~~for the service of process and, if the,~~

~~(b)(2)~~ If the subpoena commands a person's appearance, is commanded, by tendering to that person the party or attorney responsible for issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or any officer or agency of either, fees and mileage need not be tendered.

~~(b)(3)~~ Prior notice of any commanded production or inspection of documents or tangible things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b). If the subpoena commands a person to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things for inspection, copying, testing or sampling or to permit inspection of premises, the party or attorney responsible for issuing the subpoena shall serve each party with notice of the subpoena by delivery or other method of actual notice before serving the subpoena.

~~(b)(1)(B)~~ Proof of service when necessary shall be made by filing with the clerk of the court from which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

~~(b)(1)(C)~~ Service of a subpoena outside of this state, for the taking of a deposition or production or inspection of documents or tangible things or inspection of premises outside this state, shall be made in accordance with the requirements of the jurisdiction in which such service is made.

~~(b)(2)~~ Subpoena for appearance at trial or hearing. A subpoena commanding a witness to appear at a trial or at a hearing pending in this state may be served at any place within the state.

~~(b)(3)~~ Subpoena for taking deposition. (c) Appearance; resident; non-resident.

~~(b)(3)(A)-(c)(1)~~ A person who resides in this state may be required to appear:

(c)(1)(A) at a trial or hearing in the county in which the case is pending; and

(c)(1)(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county ~~where in which~~ the person resides, ~~or~~ is employed, or transacts business in person, or at such other place as the court may order.

(c)(2) A person who does not reside in this state but who is served within this state may be required to appear:

(c)(2)(A) at a trial or hearing in the county in which the case is pending; and

(c)(2)(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county ~~in this state where in which~~ the person is served ~~with a subpoena~~, or at such other place as the court may order.

~~(b)(3)(B) A subpoena commanding the appearance of a witness at a deposition may also command the person to whom it is directed to produce or to permit inspection and copying of documents or tangible things relating to any of the matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 30(b) and paragraph (c) of this rule.~~

~~(b)(4) Subpoena for production or inspection of documents or tangible things or inspection of premises. A subpoena to command a person who is not a party to produce or to permit inspection and copying of documents or tangible things or to permit inspection of premises may be served at any time after commencement of the action. The scope and procedure shall comply with Rule 34, except that the person must be allowed at least 14 days to comply as stated in subparagraph (c)(2)(A) of this rule. (d) Payment of production or copying costs. The party serving or attorney responsible for issuing the subpoena shall pay the reasonable cost of producing or copying the documents, electronically stored information or tangible things. Upon the request of any other party and the payment of reasonable costs, the party serving or attorney responsible for issuing the subpoena shall provide to the requesting party copies of all documents, electronically stored information or tangible things obtained in response to the subpoena or shall make the tangible things available for inspection.~~

~~(e)(e)~~ Protection of persons subject to subpoenas; objection.

~~(e)(1) A (e)(1) The~~ party or ~~an~~ attorney responsible for ~~the issuance and service of~~
~~issuing~~ a subpoena shall take reasonable steps to avoid imposing an undue burden or
expense on ~~a the~~ person subject to ~~that the~~ subpoena. The court ~~from which the~~
~~subpoena was issued~~ shall enforce this duty and impose upon the party or attorney in
breach of this duty an appropriate sanction, which may include, but is not limited to, lost
earnings and a reasonable attorney's attorney fee.

~~(e)(2)(A) (e)(2) A subpoena served upon a person who is not a party to copy and~~
~~mail or deliver documents or electronically stored information,~~ to produce ~~or to permit~~
~~inspection and copying of~~ documents, electronically stored information or tangible
things, ~~or to permit inspection of premises, whether or not joined with a command to~~
~~appear at trial, or at hearing, or at deposition, must allow the person at least 14 days~~
~~after service to comply, unless a shorter time has been ordered by the court for good~~
~~cause shown~~ shall comply with Rule 34(a) and (b)(1), except that the person subject to
the subpoena must be allowed at least 14 days after service to comply.

~~(e)(2)(B) A person commanded to produce or to permit inspection and copying of~~
~~documents or tangible things or to permit inspection of premises need not appear in~~
~~person at the place of production or inspection unless also commanded to appear at~~
~~trial, at hearing, or at deposition.~~

~~(e)(2)(C) A person commanded to produce or to permit inspection and copying of~~
~~documents or tangible things or inspection of premises may, before the time specified~~
~~for compliance with the subpoena, serve upon the party or attorney designated in the~~
~~subpoena written objection to inspection or copying of any or all of the documents or~~
~~tangible things or inspection of the premises.~~ (e)(3) The person subject to the subpoena
may object if the subpoena:

(e)(3)(A) fails to allow reasonable time for compliance;

(e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in
a county in which the person does not reside, is not employed, or does not transact
business in person;

(e)(3)(C) requires a non-resident of this state to appear at other than a trial or
hearing in a county other than the county in which the person was served;

(e)(3)(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

(e)(3)(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(e)(3)(F) subjects the person to an undue burden or cost;

(e)(3)(G) requires the person to produce electronically stored information in a form or forms to which the person objects;

(e)(3)(H) requires the person to provide electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost; or

(e)(3)(I) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(e)(4)(A) If the person subject to the subpoena objects, the objection must be made before the date for compliance.

(e)(4)(B) The person subject to the subpoena shall state the objection in a concise, non-conclusory manner.

(e)(4)(C) If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party or attorney responsible for issuing the subpoena to contest the objection.

(e)(4)(D) If the objection is that the electronically stored information is from sources that are not reasonably accessible because of undue burden or cost, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost.

(e)(4)(E) The person shall serve the objection on the party or attorney responsible for issuing the subpoena. The party or attorney responsible for issuing the subpoena shall serve a copy of the objection on the other parties.

(e)(5) If objection is made, the party ~~serving or attorney responsible for issuing~~ the subpoena ~~shall is~~ not ~~be~~ entitled to ~~inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, compliance but may move at any time for an order to compel the production compliance. The motion shall be served on the other parties and on the person subject to the subpoena. Such an An~~ order to compel production ~~compelling compliance~~ shall protect ~~any the~~ person ~~who is not a party or an officer of a party~~ subject to the subpoena from significant expense ~~resulting from the inspection and copying commanded or harm. The court may quash or modify the subpoena. If the party or attorney responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.~~

~~(c)(3)(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it:~~

~~(c)(3)(A)(i) fails to allow reasonable time for compliance;~~

~~(c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition in a county in which the resident does not reside, or is not employed, or does not transact business in person; or requires a non-resident of this state to appear at deposition in a county other than the county in which the person was served;~~

~~(c)(3)(A)(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies;~~

~~(c)(3)(A)(iv) subjects a person to undue burden.~~

~~(c)(3)(B) If a subpoena:~~

~~(c)(3)(B)(i) requires disclosure of a trade secret or other confidential research, development, or commercial information;~~

~~(c)(3)(B)(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party;~~

~~(c)(3)(B)(iii) requires a resident of this state who is not a party to appear at deposition in a county in which the resident does not reside, or is not employed, or does not transact business in person; or~~

~~(c)(3)(B)(iv) requires a non-resident of this state who is not a party to appear at deposition in a county other than the county in which the person was served; the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

~~(d)~~ (f) Duties in responding to subpoena.

(f)(1) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall serve on the party or attorney responsible for issuing the subpoena a declaration under penalty of law stating in substance:

(f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

(f)(1)(B) that the documents, electronically stored information or tangible things copied or produced are a full and complete response to the subpoena;

(f)(1)(C) that the documents, electronically stored information or tangible things are the originals or that a copy is a true copy of the original; and

(f)(1)(D) the reasonable cost of copying or producing the documents, electronically stored information or tangible things.

~~(d)(1)~~ (f)(2) A person ~~responding to a subpoena commanded to copy and mail or deliver documents or electronically stored information or~~ to produce documents, electronically stored information or tangible things shall copy or produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the ~~demand~~ subpoena.

~~(d)(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.~~

(f)(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in the form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(f)(4) If the information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, the party must promptly return, sequester, or destroy the specified information and any copies of it and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

~~(e)-(g)~~ Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person ~~may be deemed a~~ is punishable as contempt of ~~the~~ court ~~from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to appear or produce at a place not within the limits provided by subparagraph (c)(3)(A)(ii).~~

~~(f)-(h)~~ Procedure ~~where~~ when witness ~~conceals himself~~ evades service or fails to attend. If a witness evades service of a subpoena, or fails to attend after service of a subpoena, the court may issue a warrant to the sheriff of the county to arrest the witness and bring the witness before the court.

~~(g)-(i)~~ Procedure when witness is confined in jail. If the witness is a prisoner ~~confined in a jail or prison within the state~~, a party may move for an order ~~for examination to examine the witness~~ in the jail or prison ~~upon deposition or, in the discretion of the court, for temporary removal and production or to produce the witness~~ before the court or officer for the purpose of being orally examined, ~~may be made upon motion, with or without notice, by a justice of the Supreme Court, or by the district court of the county in which the action is pending.~~

~~(h)-(i)~~ Subpoena unnecessary; ~~when~~. A person present in court, or before a judicial officer, may be required to testify in the same manner as if the person were in attendance upon a subpoena.

~~Advisory Committee Notes~~

~~Purposes of Amendment. The 1994 amendments represent a substantial change from prior practice. Patterned on the 1991 amendments to Fed. R. Civ. P. 45, these amendments expedite and facilitate procedures for serving subpoenas, modify procedures relating to persons who are not parties to correspond to procedures relating to parties under Utah R. Civ. P. 34, and specify the rights and obligations of persons served with a subpoena.~~

~~Paragraph (a). This paragraph amends former Rule 45 in the following important respects:~~

~~First, subparagraph (a)(6)(3) authorizes an attorney to issue and sign a subpoena as an officer of the court. The subparagraph eliminates the requirement that an attorney obtain a subpoena from the clerk of the court, and the requirement that a subpoena be issued under seal of the court. An attorney who is not a member of the Utah State Bar but who has been admitted to practice pro hac vice in the court in which the action is pending is authorized to issue a subpoena. Consistent with the authority of an attorney to issue a subpoena, subparagraph (a)(1)(B) requires every subpoena to identify the attorney serving it. Subparagraph (a)(1)(A) requires every subpoena to issue from the court in which the action is pending, amending former Rule 45(d)(1), which authorized a deposition to be issued from the court where the deposition is to take place, as well as the court where the action is pending.~~

~~Second, subparagraph (a)(2) authorizes a party to serve upon a person who is not a party a subpoena to produce or to permit inspection and copying of documents or tangible things, or to permit inspection of premises. A party no longer must serve a subpoena duces tecum to discover documents or tangible things from a person who is not a party, although the amended rule preserves that option, and no longer must bring an independent action for entry onto land. Subparagraph (a)(2) also requires a person who is not a party to produce materials within that person's control, which subjects that~~

~~person to the same scope of discovery as if that person were a party served with a discovery request under Rule 34.~~

~~Third, subparagraph (a)(1)(D) requires every subpoena to state the rights and duties of a person served in a form substantially similar to the form in the Appendix to these rules.~~

~~Paragraph (b) also amends former Rule 45 in several important respects. Subparagraph (b)(1)(A) requires prior notice of each commanded production or inspection of documents or tangible things, or inspection of premises, to be served as prescribed by Rule 5(b). This subparagraph ensures that other parties will have notice enabling them to object to or participate in discovery, or to serve a demand for additional materials. No similar provision is included for depositions, because depositions are governed by Rule 30 or 31. Subparagraph (b)(1)(A) specifies that the subpoena may be served as required by Rule 4(e), amending paragraph (c) of the former rule.~~

~~Subparagraph (b)(4) authorizes a subpoena for production or inspection of documents or tangible things or inspection of premises to be served upon a person who is not a party at any time after commencement of the action. A subpoena served upon a person who is not a party has the same scope specified in Rule 34(a) for a request served upon a party, and is subject to the same procedures specified in Rule 34(b). A person who is not a party is not required to file a written response to the subpoena, unless the party objects to the subpoena pursuant to subparagraph (c)(2)(D).~~

~~Subparagraph (b)(4) also requires each party serving a subpoena for the production of documents to provide to other parties copies of documents obtained in response to the subpoena. No comparable provision appears in the federal rule, but the Committee determined that such a provision would alleviate some of the burden imposed upon persons who are not parties and shift it to parties.~~

~~Other subparagraphs make minor amendments to the former Rule 45. Subparagraph (b)(1)(C) amends former paragraph (d)(3) to include a subpoena for document production or inspection, as well as a deposition subpoena. Subparagraph (b)(2) is the former paragraph (e) with minor modifications. Subparagraph (b)(3)(A) requires a nonresident to attend deposition only in the county where the nonresident is~~

~~served, amending former paragraph (d)(2) to eliminate the requirement that a nonresident attend a deposition within forty miles of the place of service.~~

~~Paragraph (c). Paragraph (c) states the rights of witnesses or other persons served with subpoenas. The paragraph does not diminish rights conferred by any other rule or any other authority. Subparagraph (c)(1) states the duty of an attorney to minimize the burden on a witness who is not a party, and specifies that such a witness may recover lost earnings that result from the misuse of a subpoena. Subparagraph (c)(1) expands the responsibility of an attorney stated in Rule 26(g); this responsibility is correlative to the expanded power of an attorney to issue a subpoena.~~

~~Subparagraph (c)(2)(A) specifies that a person who is not a party served with a subpoena for the production or inspection of documents or tangible things or inspection of premises must have at least 14 days to respond. A subpoena to appear at trial, at hearing, or at deposition must be served within a reasonable time, unless it also requires the production of documents.~~

~~Subparagraph (c)(2)(C) states that a person who is not a party has no obligation to make copies or to advance costs, and has no counterpart in either the federal rule or the former state rule. The Committee included this statement in the rule so that it would become part of the notice provided to each person served with a subpoena.~~

~~Subparagraph (c)(2)(D) specifies that a person served with a subpoena for the production or inspection of documents or tangible things or inspection of premises may serve written objection upon the party serving the subpoena. The party serving the subpoena bears the burden to obtain an order to compel production, and must provide prior notice to the person served of the motion to compel. A person served with a subpoena to appear at trial, at hearing, or at deposition, must appear unless the person obtains a court order to quash or modify the subpoena; a written objection to the serving party is insufficient. A person served with a subpoena duces tecum may object to providing documents by notifying the party serving the subpoena, but still must appear to testify at trial, at hearing, or at deposition, unless the person obtains an order to quash or modify the subpoena.~~

~~Subparagraph (c)(3) identifies the circumstances in which a subpoena may be modified or quashed. It follows paragraph (c)(3) of the 1991 amendments to Fed. R.~~

~~Civ. P. 45, but is modified to specify the locations where residents or nonresidents of the State may be compelled to attend deposition.~~

~~Paragraph (d). This paragraph follows the 1991 amendments to Fed R. Civ. P. 45. Subparagraph (d)(2)(D) applies to privileged attorney-client communications, and to all attorney work product protected under the doctrine of Hickman v. Taylor, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947), and progeny.~~

~~Paragraph (e). This paragraph specifies that an adequate cause for failure to obey exists when a subpoena purports to require a party to respond at a place beyond the geographic boundaries imposed by the rule, amending former paragraph (f).~~

~~Paragraph (f). This is the former paragraph (g), amended to eliminate references to the masculine pronoun.~~

~~Paragraph (g). This is the former paragraph (h).~~

~~Paragraph (h). This is the former paragraph (i), amended to eliminate references to the masculine pronoun.~~